

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Pend Oreille County Library District	)	File No. SLD-209527
Newport, Washington	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: February 13, 2002**

**Released: February 15, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by Pend Oreille County Library District (Pend Oreille).<sup>1</sup> Pend Oreille requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company to deny Pend Oreille's Funding Year 3 application for discounted services under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's

<sup>1</sup> Letter from Pend Oreille County Library District, to Federal Communications Commission, filed May 21, 2001 (Request for Review).

<sup>2</sup> See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting services.<sup>5</sup> The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.<sup>6</sup> Further, the instructions for the FCC Form 471 state that the date of signature for the FCC Form 471 “CANNOT be earlier than any Allowable Contract Date you cited in Item (17) of any Block 5 submitted with this application.”<sup>7</sup>

3. The Commission has repeatedly emphasized the importance of the competitive bidding requirement, stating that it helps to ensure that schools and libraries will receive the lowest possible pre-discount price.<sup>8</sup> The Commission concluded that competitive bidding is the most efficient means for ensuring both that eligible schools and libraries are informed about the choices available to them and that prices are not unnecessarily high, thereby minimizing the amount of support needed.<sup>9</sup> In order to permit all interested parties sufficient time to respond to requests for services posted on the SLD web page, the Commission requires all schools and libraries, and consortia including such entities, to wait the requisite 28-day waiting period prior to signing a contract for discounted services.<sup>10</sup>

4. SLD denied funding for Pend Oreille’s application because “[t]he Form 471 application was signed and/or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the Form 470 to the SLD web site.”<sup>11</sup> Pend Oreille appealed to SLD, asserting that the FCC Form 471 Instructions did not specify that the signature date must be after the 28-day waiting period, only that the filing date must be.<sup>12</sup> SLD denied the appeal, finding again that Pend Oreille had not complied with the 28-day waiting period because the FCC Form

---

<sup>5</sup> See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

<sup>6</sup> 47 C.F.R. § 54.504(c); see Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

<sup>7</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (FCC Form 471 Instructions), at 26.

<sup>8</sup> See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, para. 9 (1997).

<sup>9</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>10</sup> *Universal Service Order*, 12 FCC Rcd at 9080, para. 579.

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kevin G. Paulus, Pend Oreille County Library District, dated June 30, 2000, at 5-6.

<sup>12</sup> Letter from Kevin G. Paulus, Pend Oreille County Library District, filed July 24, 2000, at 2.

470 cited in its funding requests had an Allowable Contract Date of January 17, 2000, and the FCC Form 471 was signed on January 14, 2000.<sup>13</sup> Pend Oreille then filed the pending Request for Review, arguing again that the instructions only require that it wait 28 days before filing its application, and noting that it satisfied this requirement.

5. Upon review of the record, we conclude that SLD correctly denied Pend Oreille's request for support. Pend Oreille's FCC Form 470 was posted on December 20, 1999.<sup>14</sup> Under the program rules, Pend Oreille was not permitted to sign and submit its FCC Form 471 until after the end of the 28-day competitive bidding period, on January 17, 2000, a date noted on Pend Oreille's FCC Form 470 itself as the Allowable Contract Date.<sup>15</sup> Contrary to Pend Oreille's assertions, the Form 471 instructions were not ambiguous, but clearly specified that the "date of *signature* . . . CANNOT be earlier than any Allowable Contract Date you cited in Item (17) of any Block 5 submitted with this application."<sup>16</sup>

6. The Common Carrier Bureau (Bureau) has held that a signature date on an FCC Form 471 or on a service provider agreement that predates the expiration of the 28-day posting period indicates that the applicant failed to wait 28 days before entering into an agreement with a service provider and therefore violated the Commission's competitive bidding rules.<sup>17</sup> The Bureau has consistently denied requests for review by applicants that similarly violated the Commission's competitive bidding rules.<sup>18</sup> For these reasons, we deny Pend Oreille's Request for Review.

---

<sup>13</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kevin G. Paulus, Pend Oreille County Library District, dated April 20, 2001, at 1.

<sup>14</sup> See FCC Form 470, Pend Oreilla [sic] County Library District, filed December 20, 1999.

<sup>15</sup> See *id.*; 47 C.F.R. § 54.504(b)(4).

<sup>16</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (FCC Form 471 Instructions), at 26 (emphasis added).

<sup>17</sup> See *Request for Review by Minor High School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-139210, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 13790, 13792, para. 5 (Com. Car. Bur. 2000).

<sup>18</sup> See *Request for Review by Cathedral Grade School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-87608, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2953 (Com. Car. Bur. rel. Dec. 21, 1999); *Request for Review by Currituck County Schools Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-111040, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 5564 (Com. Car. Bur. 2000); *Request for Review by Gustine Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-108651, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2534 (Com. Car. Bur. rel. Nov. 16, 1999).

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Pend Oreille County Library District, Newport, Washington, on May 21, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau